IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2400 OF 2004

Ashwini Kumar Mishra .. Petitioner.
V/s.
Union of India & Another .. Respondents.

Mr.K. Shroff i/b. Akshar Laws for the petitioner.

Mr.Rajiv Chavan with Ms.Ashila Kaushik for the respondents.

**CORAM : R.M. LODHA, &**
**J.P. DEVADHAR, JJ.**

**DATED : 4TH OCTOBER, 2004.**

**P.C. :**

Rule. Returnable forthwith.

2. The advocate on record for the respondents waives service.

3. Rule is treated on board and is heard finally at this stage.

4. The Commissioner of Customs, Nhava Sheva vide its order in original dated May 12, 1998 exercised its powers under Section 111(m) of the Customs Act, 1962 and gave the firm M/s.Trimurthy Enterprises an option to redeem the goods on payment of fine of Rs.2,00,000/- within one month from the

receipt of the order. The Commissioner of Customs, Nhava Sheva imposed penalty of Rs.4,16,000/- on the present petitioner being partner of M/s.Trimurthy Enterprises under section 112(a); though no penalty was imposed on the firm. Upset by the order in original dated May 12, 1998 the appeal was preferred before the Customs, Excise and Gold (Control) Appellate Tribunal, Bombay [for short 'CEGAT']. In the cause title of the appeal, name of firm was shown as the appellant. In the body of the appeal, however, the firm as well as the petitioner (partner of the firm) were shown as appellants. The prayers in the appeal were for setting aside the entire order in original i.e. redemption of goods on payment of fine by the firm and imposition of penalty upon the partner (the petitioner). The application was made by the firm and the partner for dispensation with the payment of penalty as well as fine. The CEGAT vide its order dated December 28, 1998 observed that appeal was filed only by the firm, and therefore, the partner could not make the application for the dispensation / stay. The Tribunal took the view that the partner A.K. Mishra had not filed any appeal and, therefore, the question of waiver of deposit by him for hearing the appeal could not arise. The Tribunal also held that the waiver of fine could not

be done under Section 129(e) of the Customs Act, 1962. Accordingly, the Tribunal by its order dated December 28, 1998 dismissed the application for the dispensation / stay. It appears that in the light of the order dated December 28, 1998, the petitioner filed separate appeal before the CEGAT challenging the order of penalty passed by the Commissioner of Customs, Nhava Sheva. The said appeal was barred by time and, therefore, the petitioner made an application for condonation of delay. By the order dated December 11, 2000 the CEGAT dismissed the application for condonation of delay and consequently the appeal. Aggrieved thereby the present writ petition has been filed.

5. There has been delay in filing the appeal by the present petitioner before the CEGAT as well as the present writ petition before this court. However, from the affidavit dated September 8, 2004 filed before us along with the medical documents it appears that the petitioner has been suffering from serious illness such as tuberculosis, malfunctioning of heart, kidney and liver and he has been under constant treatment of various doctors. The facts that have come on record would reveal that there was no deliberate delay on the part of the petitioner.

As a matter of fact and as noticed above, aggrieved by the order dated May 12, 1998 passed by the Commissioner of Customs, Nhava Sheva, the appeal came to be filed and in the cause title of the appeal though the name of the firm was shown only but in the body of appeal the names of the firm as well as the partner were shown as appellants. However, the Tribunal construed the said appeal as appeal preferred by the firm only and not by the partner necessitating a separate appeal by the partner. We are informed that the appeal preferred by the firm is still pending before the CEGAT. Taking overall facts and circumstances of the case, we are satisfied that the delay in filing the appeal by the present petitioner deserves to be condoned and inconvenience caused to the respondents can be compensated by way of reasonable cost.

6. We, accordingly, dispose of the rule by following order :

i) The order dated December 11, 2000 / December 15, 2000 passed by the CEGAT is quashed and set aside subject to the petitioner depositing the cost of Rs.10,000/- with the Commissioner of

Customs, Nhava Sheva within four weeks from today.

ii) Upon proof of deposit of cost by the petitioner with the Commissioner of Customs, Nhava Sheva, the appeal preferred by the petitioner against the order in original dated May 12, 1998 shall stand restored to the file of CEGAT, West Regional Bench, Bombay and the delay in filing the appeal shall stand condoned.

iii) Upon restoration of the appeal, the petitioner shall have to comply with the pre-deposit requirement within four weeks from the date of restoration or apply to the CEGAT for dispensation of the pre-deposit. We clarify that the restoration of appeal shall not be construed that pre-deposit requirement has been dispensed with.

**(R.M. LODHA, J.)**

**(J.P. DEVADHAR, J.)**